

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

TIMOTHY PAUL LUCERO,

Petitioner,

v.

STATE OF CALIFORNIA,

Respondent.

No. 2:23-cv-2844 KJN P

ORDER

Petitioner, a county prisoner proceeding without counsel, filed this petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. Petitioner did not file an application to proceed in forma pauperis.

In the petition, petitioner alleges that officials at the Sacramento County Jail denied his requests for religious meals and a Quran in violation of the First Amendment. Claims challenging conditions of confinement should be raised in a civil rights action. See Wolff v. McDonnell, 418 U.S. 539, 554 (1974). The undersigned construes this action as a civil rights action because the claims raised in the petition challenge conditions of confinement. Accordingly, the petition is dismissed with leave to file a complaint.

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As stated above, petitioner has not filed an in forma pauperis affidavit or paid the required filing fee for a civil rights action of \$350.00 plus the \$55.00 administrative fee.¹ See 28 U.S.C. §§ 1914(a), 1915(a). Petitioner is provided the opportunity either to submit the appropriate affidavit in support of a request to proceed in forma pauperis or to submit the required fees totaling \$405.00.

Petitioner is cautioned that the in forma pauperis application form includes a section that must be completed by a jail official, and the form must be accompanied by a certified copy of petitioner's jail trust account statement for the six-month period immediately preceding the filing of this action.

In accordance with the above, IT IS HEREBY ORDERED that:

1. This action is construed as a civil rights action;
2. The petition is dismissed with thirty days leave to file a civil rights complaint;
3. Petitioner shall submit, within thirty days from the date of this order, an affidavit in support of his request to proceed in forma pauperis on the form provided by the Clerk of Court, or the required fees in the amount of \$405.00;
4. The Clerk of the Court is directed to send petitioner an Application to Proceed In Forma Pauperis By a Prisoner and a form for a civil rights complaint; and
5. Failure to comply with this order will result in a recommendation of dismissal of this action.

Dated: December 21, 2023


KENDALL J. NEWMAN
UNITED STATES MAGISTRATE JUDGE

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¹ If leave to file in forma pauperis is granted, petitioner will still be required to pay the filing fee but will be allowed to pay it in installments. Litigants proceeding in forma pauperis are not required to pay the \$55.00 administrative fee.